IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2024 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
PANKAJKUMAR ISHWARLAL SHAH & ANR

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Appearance :
MR KC SHAH APP for Appellant
None for Respondents

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 08/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.R.VORA)

[1] This appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by the Sessions Judge, Dahod on 19th April, 2005 in Sessions Case No.330/2004 whereby both the respondents – accused came to be acquitted by the trial Court for the offences punishable under Sections 498 (a), 306 and 114 of the Indian Penal Code.

[2] According to the prosecution case, victim – Sadhnaben, in the incident, daughter of the complainant – Prakashchandra Ramchandra Katlana, had married to accused No.1 – Pankajkumar Ishwarlal Shah on 27/11/2003 at Mansor. After marriage, both were residing at Dahod. On

29/11/2003, a reception of the marriage ceremony was also arranged at Dahod and on that occasion, the parents of deceased Sadhna and her relatives had attended at Dahod and, thereafter Sadhna had resumed her parental home at Mansor. Thereafter, respondent No.1 - Pankajkumar Ishwarlal Shah had brought Sadhna to Dahod. On 13/12/2003, Harish and Monika, brother and sister of Sadhna had been to Dahod to meet Sadhna and they returned to Mansor on 14/12/2003. On 16/12/2003, Prakashchandra Ramchandra Katlana, father of victim – Sadhna for inquiring well being of Sadhna telephoned to Dahod, which was attended by one Shri Ashokbhai, who informed Prakashchandra that all family members of Prakashchandra should immediately reach to Dahod. Therefore, complainant – Prakashchandra and his family members came to Dahod. They came to know at Dahod that Sadhna committed suicide by strangulation and hanging herself with the help of ribbon (dupatta) on her neck. The information was given to Dahod Town Police Station by Sureshchandra Laxmidas Shah, which was registered as Accidental

Death Inquiry No.28/2003. That inquiry was conducted by Senior Police Sub Inspector Gulam Mohmad Musir Shaikh and he recommended visitation of his higher officer i.e. Deputy Superintendent of Police and, therefore, inquiry thereafter conducted by Deputy Superintendent of Police Mr.Bhati. When this inquiry was in progress, on 10/02/2004, complainant – Prakashchandra gave a complaint, which is on record at Ex.22 before the Deputy Superintendent of Police. A crime came to be registered and investigation was entrusted to Senior Police Sub Inspector - Gulam Mohmmad Musir Shaikh, against both the accused, respondents herein and hence they were arrested on 11/02/2004. After investigation was over in this matter, a charge-sheet came to be submitted in the Court of learned Judicial Magistrate, First Class and the case was, thereafter, committed to the Court of Sessions. Vide Ex.2, charge against both the accused came to be framed by the learned Sessions Judge, Dahod on 31/08/2004 and both the respondents – accused pleaded not guilty.

[3] The prosecution, thereafter, examined as many as nine witnesses to prove its case and produced on record about ten documents like P.M.Note, Inquest Panchnama, Panchnama of seen of offence, complaint, report, analysis and opinion of FSL etc.

[4] In the statement under Section 313 of the Code of Criminal Procedure, after denying the evidence of prosecution, it was explained by the accused that deceased Sadhna had love affairs with one Avinash Vyas, residing at Mansor and she intended to get married with Avinash Vyas. Sadhna was prevented by his family members to marry with Avinash Vyas and, therefore, she committed suicide. A false case came to be filed against them.

[5] After hearing both the sides, the learned trial Judge came to the above conclusion and hence, this appeal.

[6] Learned APP Mr.K.C.Shah for the appellant – State was heard at length.

[7] We have gone through the record very carefully. Learned APP Mr.K.C.Shah has assisted this Court extensively and provided with the copies of the depositions and the documents and other necessary papers, to give conclusion and, therefore, we have examined each aspect in detail of the case, at this stage.

[8] The prosecution has examined Dr.Babulal Badariprasad Mittal as, P.W.1, at Ex.7. He had conducted postmortem of the deadbody of Sadhna on 16/12/2003 and according to him, the death was due to strangulation and there were no injuries on the body of Sadhna, except ligature mark.

[8.1] P.W.2 – Jayantilal Kanaiyalal Puwar is examined at Ex.9 and he is a panch of inquest panchnama and he produced panchnama at Ex.10 on

record.

[8.2] P.W.3 – Masurbhai Bhimabhai Bhuriya is examined at Ex.13. He was incharge PSO on 10/02/2004 of Dahod Police Station and he received the complaint in this case from Dy. S.P, Dahod, which he registered as a crime. The certified copy of the entry made in the police register, is produced on record at Ex.14.

[8.3] P.W.4 – Vishnukanta Prakashchandra Katlana is examined at Ex.15 and she happens to be the mother of deceased Sadhna. She has stated that after marriage, Sadhna started residing with Pankajkumar and 10-12 days after marriage, Harish and Monika, her son and daughter had been to Dahod to inquire about Sadhna and both stayed 2-3 days at Dahod. At that time, Sadhna had conveyed to them that the accused were taunting her that their elder daughter-in-law Shilpa had brought dowry in 10-12 bags, while Sadhna had not brought anything. Both children of this witness conveyed

this fact to her. She has been cross-examined in detail by the defence.

[8.4] P.W.5 – Monikaben Prakashchandra Katlana is examined at Ex.17. She has stated that after the marriage, she had been to visit Sadhna with her brother Harish. During they were going to the house of Sadhna in Rickshaw from the Station, Sadhna conveyed to her that her mother-in-law was taunting her that her elder daughter-in-law Shilpa had brought dowry from her parents in ten bags and Sadhna had not brought anything. Thereafter, on 14/12/2003, according to the witness, they were returned to Mansor. In para-2 she has narrated the fact that after the death of Sadhna, they visited at Dahod, but the behaviour of in-laws of Sadhna was not good towards them.

[8.5] P.W.6 – Harishkumar Prakashchandra Katlana is examined at Ex.18. After stating about the fact of the marriage of the Sadhna, he stated

that when he and his sister Monika visited Sadhna, she conveyed to them that both the accused were taunting her that her elder daughter-in-law Shilpa had brought ten bags dowry and Sadhna had brought only one bag and she was harassed by them. The witness stated that he told Sadhna that the witness might talk to the accused about this, but Sadhna had replied that it was not possible because accused would likely to kill her. Then the witness stated about taking Sadhna at Mansor and it was denied by the accused No.1. It was stated that accused conveyed that unless his demands were not met with, he would not permit Sadhna to come Mansor. On 16/12/2003, the incident had occurred. He thought to convey this fact to his father, but since his health was not good, he had not conveyed this fact to his parents. He has been cross-examined in detail by the defence.

[8.6] P.W.7 – Prakashchandra Ramchandra Katlana, who is complainant and father of Sadhna, is examined at Ex.21. After stating the fact of

the marriage, he stated that Harish and Monika, who had visited Sadhna, had returned after two days. On 15/12/2003, he had talked with Sadhna on telephone and Sadhna requested him to come Mansor, but he stated that her mother-in-law had permitted her to visit Mansor after first day of next month. He also stated that Sadhna had conveyed about the demands of dowry and cruelty executed upon her by both the accused to his son and daughter Harish and Monika. He has been cross-examined in detail by the defence.

[8.7] P.W.8 – Rajendra Ramchandra Katlana is examined at Ex.23. He is younger brother of complainant – Prakashchandra. He stated that on death of Sadhna, they had visited at Dahod, but her-in-laws permitted them to enter in the house and they were not permitted to see the deadbody of Sadhna. He stated that anyhow they entered in the room, where the deadbody of Sadhna was lying and they were sitting that night out of the house. On next day, funeral ceremony was

performed. Thereafter all of them had seen the DSP at Dahod District and he was informed about the fact that Sadhna conveyed Harish and Monika about demands of dowry and cruelty executed upon her by the accused. He has been cross-examined in detail by the defence.

[8.9] P.W.-9 Gulam Mohamed Musir Shaikh is examined at Ex.26 and was incharge of inquiry of Accidental Death Case No.28/2003. He stated that in the said inquiry, he had drawn a panchnama of seen of offence and inquest panchnam, which were produced on record at Ex.10 and 11. The deadbody was referred to the Medical Officer for postmortem. He recorded the statements of the witness and the objects which were seized from the seen of offence, were sent to FSL with forwarding letter and, thereafter, he recommended the visitation of his higher officer. Dy.S.P. Mr.Ansari recorded the complaint of the complainant which was registered as a crime and the witness took the charge of investigation and

submitted a charge-sheet. This witness has been, extensively, cross-examined in detail by the defence.

This is all the evidence of the prosecution.

[9] We have carefully gone through the evidence recorded and documents produced and the reasons recorded by the trial Judge for acquittal.

[10] This being an appeal against the acquittal, at this stage with the assistance of learned APP Mr.K.C.Shah, we have scrutinized the record, it is necessary to re-appreciate the evidence and to scan the reasons recorded by the trial Judge for acquittal.

[11] The following are the reasons, recorded by the trial Judge for acquittal.

[11.1] It is not in dispute that the death of Sadhna was caused on account of strangulation. The learned trial Judge appreciating the evidence of P.W.4 - Vishnukanta Prakashchandra Katlana at Ex.15, observed that the incident occurred on 16/12/2003. According to this witness, her children conveyed to her about the dowry demand etc. on their return from Dahod. Even then the complaint came to be filed on 10/02/2004 only. It is also clear according to the learned trial Judge from the evidence of this witness that Harish and Monika conveyed to her what Sadhna stated at Mansor, not only to her but this fact was conveyed to other family members as well, even then this witness did not utter a word before the police in an accidental inquiry which was in progress. The learned trial Judge observed that the Dy.S.P had recorded the statement of this witness on 16/12/2003, wherein she had stated that she was in contact with Sadhna through telephone frequently. On 14/12/2003, Harish and Monika returned from Dahod and they

conveyed that Sadhna was well settled and on 16/12/2003, this witness Vishnukanta Prakashchandra Katlana, P.W.4 stated before Dy.S.P that she had no suspicion on anybody on account of the death of Sadhna. She further stated before the Dy.S.P that in telephone conversation with the deceased Sadhna, she had never expressed that there was cruelty from her in-laws executed upon her. The learned trial Judge, therefore, did not place reliance on this witness.

[11.2] The learned trial Judge, while appreciating the evidence of P.W.5 – Monikaben Prakashchandra Katlana, at Ex.17 observed that she conveyed the fact of dowry demand and cruelty executed upon Sadhna at Mansor on 18/12/2003. The learned trial Judge has further observed that from the evidence of P.W.5 – Monikaben Prakashchandra Katlana as well as in evidence of her brother Harish, it is crystal clear that none of these witnesses had conveyed the fact of dowry

demand to their family members that Sadhna had told them that her in-laws were demanding dowry and executing cruelty upon her. Not only this but both of them P.W.5 – Monikaben Prakashchandra Katlana and Harish Prakashchandra Katlana stated the reasons that since the health of their parent was not in good condition, they did not convey this fact to them. While witness - Vishnukanta Prakashchandra Katlana, P.W.4, mother of the deceased Sadhna stated in her evidence that Harish and Monika conveyed to her about the cruelty and dowry demand on the very next day. While Monika stated that this fact conveyed only on 16/12/2003 i.e. after the death of Sadhna and, therefore, the learned trial Judge found this fact contradictory and going to the root of the prosecution case as not place any reliance upon this witness.

[11.3] While appreciating the evidence of P.W.7 – Prakashchandra Ramchandra Katlana, complainant and father of deceased Sadhna, the learned trial

Judge observed that in his examination-in-chief, complainant did not state that Harish and Monika had conveyed him that cruelty was being executed upon Sadhna and demand of dowry, was made by the accused as conveyed by Sadhna to them. But in examination-in-cross, this witness admitted that no such fact was conveyed by Harish and Monika to him and, therefore, the whole theory according to the learned trial Judge which is based on what was conveyed by Sadhna to Harish and Monika, fails.

[11.4] The learned trial Judge, after appreciating the evidence, further came to the conclusion that according to the evidence, the father of Sadhna and other family members were in constant contact with Sadhna. The marriage was performed on 27/11/2003. A reception ceremony was arranged on 29/11/2003. The family of Sadhna with all enthusiasm participated in this ceremony. According to custom with enthusiasm on 30/11/2003, Sadhna was brought to parental house,

as per the evidence recorded, that too without any dispute and in very good atmosphere and relationship. On 02/12/2003, accused No.1 had been to Mansor to bring Sadhna to Dahod and he brought Sadhna to Dahod. Thereafter, accused No.1 – Pankajkumar and Sadhna had been on tour to Abu etc. The family members of Sadhna was in constant touch during this period also. The learned trial Judge further came to the conclusion that Sadhna was at her in-laws for very short period. During that period she was in constant touch with her parents. Her parents, sister and brother had visited twice at Dahod and in these circumstances, had there been anything about cruelty or dowry demand, Sadhna must have conveyed this thing to the family members, but according to the learned trial Judge, no such evidence is coming forward from the prosecution case.

[11.5] The learned trial Judge also considered the evidence of Harish and Monika and came to the conclusion that while Harish and Monika visited

at Dahod, according to evidence recorded, it was found by them that Sadhna was well placed and there was no dispute or squirmishes as complained off by the complainant, thereafter.

[11.6] The learned trial Judge further considered the fact that the incident occurred on 16/12/2003 and after the death of Sadhna, on that day, the family members i.e. parents etc. visited Dahod, but the complaint came to be filed by the complainant only on 10/12/2004 causing delay of 52 days. According to the learned trial Judge, there is no explanation of this delay by the prosecution. On the contrary, the fact remains that even on 16/12/2003 and thereafter parents of Sadhna were in Dahod only and in Accidental Inquiry, their statements were also recorded. This throws doubt on the prosecution case.

[12] Now above are the reasons given by the trial Court for acquitting the accused. We have undertaken exercise of reassessing and re-

appreciating the evidence of each witness. We find that the learned trial Judge did not appreciate, which was not on record and de-horse the evidence recorded during the trial. While re-appreciating the evidence independently, we find that the case hinges on the thread that Harish and Monika were conveyed by Sadhna about the demand of dowry and cruelty executed. Now this core circumstance is not free from doubt as the question arises as to why if this fact was conveyed to the parents of the deceased, the complaint was not filed before 10/02/2004, though the incident was of 16/12/2003 and even if this fact might have been conveyed by Monika and Harish to other family members after 16/12/2003. It appears that the immediate version, after the incident, of the parents of the Sadhna in Accidental Death Inquiry, was different than what was stated in Ex.22 complaint. The learned trial Judge is correct that there is no satisfactory explanation as to why the complaint came to be filed as late as 52 days. Eventhough the parents

were very well present at Dahod during the death of Sadhna and might be in the know that before Harish and Monika, Sadhna had conveyed about the demand of dowry and cruelty. Prosecution case becomes doubtful by these circumstances and added circumstances are the facts recorded in the evidence that the parents of Sadhna and her family members were in constant touch with Sadhna and at any time Sadhna would have conveyed to her parents about the demand of dowry and cruelty, had in fact, accused might have demanded dowry and executed cruelty. From the cross-examination of witnesses, it is found that Sadhna and accused No.1 were living happy life even then very short span of period during which also as husband and wife, they had been to tour to Abu etc. In these circumstances, whatever evidence is led about cruelty is not at all proved by the prosecution beyond reasonable doubt for the reasons stated as above. The exercise which we undertook to reappraise the evidence yields no different findings. Therefore, from the findings arrived at

by the trial Judge for the acquittal of the accused for the charges levelled against them, in appeal against the acquittal, on re-appreciation of evidence, even if different view is possible, then also, as per the law, the view favourable to the accused must be adopted. But this is the case wherein from its own facts even on re-appreciation, no second view is possible, except that the evidence of cruelty as led by the prosecution is not free from doubt, which led to the suicidal death of Sadhna. Irrespective of the explanation offered by the accused about the cause of the death of Sadhna and in respect of love affair with Avinash Vyas, it is required to be proved by the prosecution that cruelty envisaged under Section 498(a) was executed upon the deceased which had driven her to commit suicide to the extent that there was no alternative left with deceased, except to commit suicide. We could not find that spotless evidence leading to the conclusion that cruelty was executed upon Sadhna and on account of that, she

committed suicide. However, on re-appreciation of evidence, we do not find any reasons to interfere in the grounds of acquittal as recorded by the learned trial Judge and, therefore, after careful exercise and perusing and scanning the record, we come to the following conclusion.

The appeal stands dismissed.

[J. R. VORA,J.]

[SHARAD D. DAVE,J.]

(vijay)